

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on February 11, 1999 at 3:07 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddye McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 396 SB 387, 2/9/1999; HB
179, 2/1/1999
Executive Action: SB 387 SB 396 SB 218 SB 305 HB
179

HEARING ON SB 396

Sponsor: SEN. SUE BARTLETT, SD 27, Helena

Proponents: **Nancy Butler, State Fund**
 Christian McKay, Montana Joint Heavy & Highway
 Committee
 Don Judge, AFL-CIO

Opponents: **None.**

Opening Statement by Sponsor:

SEN. SUE BARTLETT, SD 27, Helena, remarked this section of the law was designed to bring some Workers' Compensation rate relief to contractors in the construction industry when it was originally passed in 1991. Workers' Compensation premiums are based on the \$100 of payroll. Wages for the same type of work in the construction industry can cover a broad range, this section of the law attempts to prevent high-paying contractors from being penalized for paying those high wages. People have worked with this section of the law for eight years and everyone agrees it is not accomplishing what it was intended to accomplish. This is because the starting point is too high, which is 1 1/2 times the Montana average weekly wage. Average weekly wage is a standard figure set by July 1 each year by the Department of Labor & Industry.

She mentioned she needed to get this bill turned in to avoid problems with transmittal deadlines so she dropped the bill in striking out the 1 1/2 times language on line 17. There has been an amendment drafted **EXHIBIT(las34a01)** which would insert the appropriate factor which is 1.168 times the average weekly wage. This change has been agreed upon which is an equivalent of \$12 per hour.

This change will apply to premium rates which take affect after July 1, 2000 and subsequent years. This will provide the time the State Fund needs to adopt their new plan implementing this through the rules process, so the bill actually goes into effect July 1, 1999 but it will not affect premium rates until July 1, 2000.

Proponents' Testimony:

Nancy Butler, State Fund, alleged they administer a construction credit program and can handle it with this change so it meets the industry's needs.

Ms. Butler mentioned **Jacqueline Lenmark, American Insurance Association,** was unable to be present but also supports this bill with the amendment as is the **State Fund.**

Christian McKay, Montana Joint Heavy & Highway Committee, remarked they have been working with the State Fund, the private insurers, the Plan 2 insurers, and **SEN. BARTLETT**. They support the bill with the amendment.

Don Judge, Montana State AFL-CIO, stated they support this legislation as well.

Opponents' Testimony:

None.

Questions from Committee Members and Responses:

SEN. FRED THOMAS asked **Nancy Butler** what the 1.16 times is.

Nancy Butler answered right now the idea of this program is to give the high wage payers a credit against their premiums to level the playing field in the construction industry. Now the law reads 1 1/2 times which makes the starting point for the credit a wage of \$15.41 per hour. The industry is saying that is a little high, many wages are lower than that so they want to begin the point of the credit lower. The 1.168 would start it at \$12 per hour, that is what it would still be this year but it will roll with the state average weekly wage. As inflation rises, so will this dollar amount for the starting point for this credit.

SEN. THOMAS asked if this pertains only with the construction industry credit used in Workers' Compensation rates now.

Ms. Butler responded that is correct. It was put into law in 1991, just for the construction industry.

CHAIRMAN KEATING asked if **Mike Foster, Montana Contractor's Association,** was aware of this and whether or not it affected them.

SEN. BARTLETT answered they will benefit from this. She was so concentrated on working with the Plan 2 and Plan 3 insurers to reach agreements, that it was an oversight. She will be glad to check with **Mr. Foster** to make sure it is acceptable with his association.

SEN. VICKI COCCHIARELLA inquired since most of them are a self-insured Plan 1, that this is a bonus to them.

SEN. BARTLETT responded that is true. The larger contractors, in particular, are in a self-insured group and don't insure with

neither Plan 2 nor Plan 3 and to that extent, would not be affected by this because they don't pay premiums.

CHAIRMAN KEATING asked if this actually brought down the Workers' Compensation premiums.

SEN. BARTLETT said that is correct, she believes, that is the outcome. She referred the question to **Nancy Butler**.

Nancy Butler stated if a worker was paid \$22.41, the employer would get a credit of 22%.

CHAIRMAN KEATING asked how the credit is received.

SEN. THOMAS answered this is part of the equation with how you start with loss costs. The message in this legislation is that a contractor who pays well will not have to pay as much Workers' Compensation because they pay on a scale higher than someone else.

CHAIRMAN KEATING inquired if this does affect their rate.

SEN. THOMAS responded, "it does".

Closing by Sponsor:

SEN. BARTLETT commented this is a pretty straight-forward concept and hopes this Committee will give it a "do pass".

{Tape : 1; Side : A; Approx. Time Counter : 11 - 18}

HEARING ON SB 387

Sponsor: **SEN. BILL WILSON, SD 22, Great Falls**

Proponents: **None.**

Opponents: **None.**

Opening Statement by Sponsor:

SEN. BILL WILSON, SD 22, Great Falls, remarked **SB 387** is a bill to prohibit an employer from imposing a fee or a charge as a condition of employment. **EXHIBIT(1as34a02)** is a letter from NorthWest Airlines. Their policy in Montana is if you want to apply for a job with them, they will charge \$75 up front to process your application. This letter states that residents of Hawaii, Iowa, Maine, Michigan or Rhode Island are not required to submit an application processing fee and checks received from

these states will be returned. The State of Montana should join that group. In Montana for someone who is out of work and looking for a job, \$75 is quite a bit. The letter also requests \$75 each time a person applies for a job.

SEN. WILSON mentioned the title language might cause some people concern in that it could be construed to mean things we wouldn't want it to mean. Frankly, if they hired someone and then charged \$75 he thought that might be okay, but not prior to it.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Questions from Committee Members and Responses:

SEN. WALTER MCNUTT asked if this bill is enacted into law, would NorthWest Airlines quit hiring pilots out of Montana?

SEN. WILSON answered he did not think so.

SEN. MCNUTT inquired if there were anyone else in the State of Montana charging this fee.

SEN. WILSON said not that he knows of.

Closing by Sponsor:

SEN. WILSON closed by reiterating \$75 is excessive and this state should not have to deal with that. Other states have addressed the problem and we should do the same.

{Tape : 1; Side : A; Approx. Time Counter : 18 - 44}

EXECUTIVE ACTION ON SB 387

Motion: **SEN. WILSON** moved that **SB 387 DO PASS.**

Motion: **SEN. WILSON** moved that **THE AMENDMENT BE ADOPTED.**
EXHIBIT(1as34a03)

Discussion: **CHAIRMAN KEATING** asked if a private employment agency helps arrange for a job for anyone with an employer and charges a fee, would this affect that arrangement?

SEN. WILSON responded in order for that to happen the language would have to state "an employer or an agent of an employer", then the language would be encompassed in this law.

CHAIRMAN KEATING commented he does not want to interfere with the private agency from not collecting their fee if the applicant wants to go through them, but the private agency may charge the fee back to the employer rather than the employee, then the employer could assess the fee on the newly employed.

SEN. COCCHIARELLA remarked she worked for an employment agency and those are fees for service, not application fees the client pays.

SEN. ALVIN ELLIS didn't understand the amendment, then decided he struck the wrong lines.

Vote: Motion that **THE AMENDMENT BE ADOPTED** carried unanimously.

Vote: Motion that **SB 387 DO PASS AS AMENDED** carried unanimously.

EXECUTIVE ACTION ON SB 396

Motion: **SEN. BARTLETT** moved that **SB 396 DO PASS**.

Motion/Vote: **SEN. BARTLETT** moved that **THE AMENDMENT BE ADOPTED**.
Motion carried unanimously.

Discussion: **SEN. ELLIS** said he understood the principle behind the bill, however, he does not understand how it works. If the employees who get higher wages miss time they receive higher benefits.

SEN. COCCHIARELLA explained this applies only to the maximum of the average weekly wage.

Vote: Motion that **SB 396 DO PASS AS AMENDED** carried unanimously.

HEARING ON HB 179

Sponsor: **REP. PAUL SLITER, HD 76, Flathead**

Proponents: **Jim Hill, Unemployment Insurance Division,
Department of Labor**

Opponents: **None.**

Opening Statement by Sponsor:

REP. PAUL SLITER, HD 76, Flathead, stood on behalf of the Department of Labor. This allows the Department of Labor to comply with federal regulation which states we need to deduct as much as 15% of an unemployment benefit if there is an IRS tax liability to be paid off.

Proponents' Testimony:

Jim Hill, Division Administrator, Unemployment Insurance Division, Department of Labor, advised this bill is a housekeeping bill which does three things. First, it conforms some state law to federal law, second, it cleans up some language for consistency and clarity, third, it puts some interpretation of statute into specific language. He explained parts of the bill.

Opponents' Testimony:

None.

Questions from Committee Members and Responses:

SEN. ELLIS asked **Jim Hill** if the federal law requires the Department of Labor to make a buyer of a business negligent for the former business owner's unemployment insurance obligation.

Mr. Hill responded if an individual purchases a farm or agriculture entity which is subject to unemployment insurance, they would inherit that subjectivity.

SEN. ELLIS inquired if he had defaulted on payments in his business and sold it, would the buyer end up with the responsibility to pay this tax?

Mr. Hill responded 'no'.

CHAIRMAN KEATING asked on page 2, since section 2 is lined out is it still in the statute?

Mr. Hill alleged their original section 2 was struck by an amendment in the House, so they re-numbered the lines.

CHAIRMAN KEATING informed the Committee if this is lined out, it does not mean it is repealed.

Closing by Sponsor:

REP. SLITER closed the bill by thanking the Committee for a nice hearing.

EXECUTIVE ACTION ON SB 218

Motion/Vote: **SEN. KEENAN** moved that **SB 218 BE TAKEN OFF THE TABLE AND RECONSIDERED. Motion carried unanimously.**

Discussion: **CHAIRMAN KEATING** recounted the fact the Fire Marshals expressed their concerns of fires in homes where people had done their own wiring, and if this bill doesn't pass the owner will still have the right to rewire his own home and not get a permit nor have it inspected. This bill got a lot of attention because it requires the resident have a permit and inspection, but also that he could wire his own property other than his residence. It appeared a business owner could rewire his own building. Somebody owning a high-rise could do their own wiring. He offered two options for amendments, one will require a person to acquire a permit in order to wire his own residence and have an inspection. **EXHIBIT(las34a04)** The other would require a person get a permit for his own residence and for a residential rental property. **EXHIBIT(las34a05)**

SEN. DALE BERRY voiced he is opposed to the second option to rental property.

SEN. WILSON stated he is also. If you want to wire your own property it is one thing, but when you start dealing with tenants and other people, there should be no right to "fry" your tenants.

Motion: **SEN. ELLIS** moved that **THE AMENDMENT (Exhibit 4) BE ADOPTED.**

Discussion: **CHAIRMAN KEATING** said this amendment will make the language of the bill so that a property owner does not have to get a license, but he does have to get a permit and does have to get the property inspected.

SEN. BERRY spoke in opposition to this amendment. In Montana he sees problems with this. If a person has a cabin, or homes and

farms in Eastern Montana, there is a distance factor for inspection. This will put a burden on people.

SEN. ELLIS said he said he does not have a problem with killing the bill, but if the Committee is going to go ahead with it, he feels this is the amendment which should be adopted.

SEN. THOMAS asked if this would keep ranchers from wiring their own barn.

Eddye McClure asserted this is only for the person's own residence.

Substitute Motion/Vote: **SEN. THOMAS** made a substitute motion that **SB 218 BE TABLED**. Substitute motion carried 8-1 with **SEN. BARTLETT** voting no.

EXECUTIVE ACTION ON SB 305

Motion: **SEN. THOMAS** moved that **SB 305 DO PASS**.

{Tape : 1; Side : B; Approx. Time Counter : 44 - 54}

Discussion: **SEN. THOMAS** alleged this bill eliminates Trade Labor Agreements so that the employer and the employees can work together without complications, also that governmental entities are not allowed to interrupt those relationships.

SEN. ELLIS asked **Eddye McClure** if it her opinion that this prohibits PLA's or if this simply state a political subdivision may not require these.

Ms. McClure answered this states they may not require them. If somebody voluntarily wanted to enter this agreement they could.

SEN. ELLIS stated that alone nullifies the opposition we had to this bill.

SEN. COCCHIARELLA asked **SEN. THOMAS** what problem there is that this bill is addressing.

SEN. THOMAS this is a preventative bill. This is setting rules to keep from situations we don't want.

SEN. COCCHIARELLA stated it doesn't seem like there was any mandatory provision related to those. She used a hypothetical example of a project outside of Missoula where they worked for the school. There was an arrangement or agreement made that when

this work begins, the school, contractor and the subcontractors would be expected to provide Workers' Compensation. This job is a legitimate, minimum wage job and has to comply with state law. She asked if that situation would be a scenario of what this bill does.

SEN. THOMAS responded he doesn't think so. This doesn't enter those areas of who requires Workers' Compensation, Unemployment Insurance or Employee Benefits. All those would be borne by the employer. This bill enters into who does what, the traditional things which is worked out between employers and their employees. For instance, who fuels the vehicles at the end of the day? Would it be a specific person other than the driver? This bill says we will work these things out and not let an outsider come into work site and dictate how people work together.

SEN. COCCHIARELLA voiced she sees no need for this legislation. It seems we are entering into an area where things have worked and there hasn't been a problem.

SEN. WILSON agreed with **SEN. COCCHIARELLA** and stated we may be making trouble with this bill and he opposes it.

SEN. THOMAS asserted there is no way it is going to cause trouble because we are stopping that from happening. This is something the Montana Contractor's Association's union and non-union members want to have in law. It's preventative and a positive and good bill.

Vote: Motion that **SB 305 DO PASS** carried 6-3 with **SEN. BARTLETT, SEN. WILSON** and **SEN. COCCHIARELLA** voting no.

EXECUTIVE ACTION ON HB 179

Motion/Vote: **SEN. ELLIS** moved that **HB 179 BE CONCURRED IN**. Motion carried 7-2 with **SEN. COCCHIARELLA** and **SEN. WILSON** voting no.

ADJOURNMENT

Adjournment: 4:01 P.M.

SENATE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

February 11, 1999

PAGE 11 of 11

SEN. TOM KEATING, Chairman

GILDA CLANCY, Secretary

TK/GC

EXHIBIT (las34aad)